

230706

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

EX PARTE NO. 711

PETITION FOR RULEMAKING TO ADOPT REVISED  
COMPETITIVE SWITCHING RULES

---

ENTERED  
Office of Proceedings  
JUL 27 2011  
Part of  
Public Record

COMMENTS OF NATIONAL GRAIN AND FEED ASSOCIATION  
IN RESPONSE TO PETITION

---

Dr. Kendell W. Keith  
President  
National Grain and Feed Association  
Suite 1003  
1250 I Street, N.W.  
Washington, DC 20005  
(202) 389-0873

Andrew P. Goldstein  
McCarthy, Sweeney & Harkaway, P.C.  
Suite 700  
1825 K Street, N.W.  
Washington, DC 20006  
(202) 775-5560

Attorney for  
National Grain and Feed Association

Dated: July 27, 2011

On July 7, 2011, the National Industrial Transportation League ("NITL") filed a Petition with the Board for a rulemaking to "adopt revised competitive switching rules." National Grain and Feed Association ("NGFA"), which represents over 900 agricultural businesses, such as domestic grain merchandisers, grain exporters, grain processors, millers, ethanol manufacturers, and animal/poultry feed companies, compliments NITL for its initiative in proposing switching rules. NGFA believes that NITL has made a strong case for the Board's authority to adopt appropriate rules and for the Board's authority to set switching compensation if carriers are required to provide terminal area switching but fail to agree on compensation (Petition, p. 62).

There are some aspects of the Petition with which NGFA may wish to disagree if a rulemaking is instituted. For example, NGFA is not yet convinced that terminal switching should be "competitive," as that term is used by NITL in its Petition, rather than "reciprocal" as that term is used in the statute and historically in the railroad industry. NGFA believes that the western railroads already recognize the principal of equality in reciprocal switching rates for grain, and that they have established equalized rates for terminal switching. NGFA hopes to address this issue in greater detail if a rulemaking is instituted.


NGFA fears that, without rules to set switching rates, a methodology for ordering terminal switching, such as proposed by NITL, will have little value for much of the grain industry. As NITL concedes, its proposed rules do not go beyond the establishment of switching itself. Once a shipper is awarded terminal switching under those rules, it is up to the shipper to battle for an appropriate rate. That approach may be suitable for industries that generate large volumes of cars from a given location, but that frequently is not the situation where grain elevators are involved. Many, even those located within terminal areas that are served by two or more carriers (as opposed to rural locations captive to a single railroad), do not generate enough traffic to justi-

fy an expenditure of \$250,000 or more to prosecute a rate complaint. It is NGFA's belief that an order compelling terminal switching should not be a stepping stone to an expensive rate battle.

NGFA is endeavoring to develop a workable, inexpensive, and accurate method to establish an appropriate level for terminal switching charges. If the Board institutes a rulemaking, NGFA hopes to present a switching rate methodology for consideration by the Board, shippers, and carriers.

Respectfully submitted,

Dr. Kendell W. Keith  
President  
National Grain and Feed Association  
Suite 1003  
1250 I Street, N.W.  
Washington, DC 20005  
(202) 389-0873



Andrew P. Goldstein  
McCarthy, Sweeney & Harkaway, P.C.  
Suite 700  
1825 K Street, N.W.  
Washington, DC 20006  
(202) 775-5560

Attorney for  
National Grain and Feed Association

Dated: July 27, 2011